

ENVIRONMENTAL PROTECTION COMMISSION[567]**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of this rule making is to adopt recent federal amendments to the PSD program related to greenhouse gas emissions. The proposed changes will match federal regulations and will streamline Iowa’s PSD program by providing additional opportunities for plantwide applicability limitations (PALs) for greenhouse gases.

Background (PSD Program and PALs)

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control. The specific nature of the project determines if it is subject to PSD requirements for greenhouse gases.

A PAL permit is a voluntary program that is available to qualifying facilities and that establishes plantwide emission limits on a pollutant-by-pollutant basis. If a facility can maintain its overall emissions of a particular pollutant below the PAL level, the facility can make changes at the facility without triggering PSD review.

Need for Rule Changes

The proposed amendments will implement recent changes that the U.S. Environmental Protection Agency (EPA) made to the federal PSD regulations. The federal amendments were published in the Federal Register on July 12, 2012, and became effective on August 13, 2012 (available at <http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16704.pdf>). The proposed amendments to state rules match the federal amendments, and will provide additional opportunities for new and existing facilities to apply for PALs for greenhouse gases.

The new PAL provisions offer maximum regulatory flexibility to affected facilities that choose to apply for PAL permits and that can maintain emissions of greenhouse gases below the PAL levels. Obtaining and complying with a PAL permit allows a facility to make changes without triggering PSD review. A PAL permit allows a facility to respond more rapidly to market conditions, while still generally ensuring that the environment is protected from adverse impacts from the changes.

A PAL may also result in environmental benefit by providing the public with knowledge of the long-term emissions from the facility because PAL permits require enhanced monitoring, record keeping, and reporting to demonstrate compliance. The Department of Natural Resources (Department) anticipates that the reduced regulatory burden associated with the PAL permitting process will offset any costs of enhanced monitoring, record-keeping, and reporting requirements.

At this time, the Department has received an application for a PAL permit from one facility, the University of Iowa (U of I). U of I has requested a PAL for greenhouse gases under the new federal amendments. Other companies have also inquired about the availability of a PAL for greenhouse gases since the federal amendments became effective.

Consequences of Not Amending State Rules

Because Iowa has its own federally approved PSD program, the Department cannot issue a final PAL permit including the new greenhouse gas provisions until these provisions are adopted into state administrative rules. Without final rules, applicants would need to apply to the EPA to use the new PAL provisions. EPA would likely take significantly longer than the Department to issue a PAL.

Additionally, if the Department does not proceed at this time, state rules for PSD will continue to be inconsistent with federal regulations, and will also be more stringent than federal regulations, which is prohibited by statute (Iowa Code section 455B.133(4)).

Because of the urgency expressed by stakeholders to expedite this rule making, the Department is also proposing that the amendments be Adopted and Filed Emergency After Notice and become effective upon the date of filing with the Administrative Rules Coordinator. The rule making confers a benefit or removes a restriction on a segment of the public, according to the provisions of Iowa Code section 17A.5(2)“b”(2). Under this schedule, the Department will accept comments following publication of this Notice of Intended Action until April 23, 2013. If the Department does not receive any public comments opposed to the proposed amendments or to an immediate effective date for the adopted amendments, the Department plans to present the amendments for final approval to the Commission on May 21, 2013. This will allow the Department to file the amendments with the Administrative Rules Coordinator no later than May 22, 2013, at which time the amendments would become effective.

Proposed Amendments

Item 1 amends the PSD program rules to revise the definition of “subject to regulation” in subrule 33.3(1). The amendment adds provisions specifying that greenhouse gases (GHGs) are not “subject to regulation” if the stationary source maintains its total sourcewide emissions below the GHG PAL level and meets all of the requirements for the PAL program and the requirements specified in a PAL permit. The proposed amendment matches the changes the EPA made to federal regulations published on July 12, 2012 (see 40 Code of Federal Regulations (CFR) 52.21(b)(49)(i)). The GHG PAL level and PAL requirements are adopted by reference in rule 567—33.9(455B).

Item 2 amends rule 567—33.9(455B) to revise the adoption by reference of the federal PAL provision. The proposed amendment will adopt by reference the new PAL provisions for GHGs that EPA published on July 12, 2012 (see 40 CFR 52.21(aa)).

The proposed amendments will allow the Department to approve PALs and issue PAL permits for GHGs on either a mass basis or using the specified calculation for “tons per year carbon dioxide equivalent emissions (CO₂e)” basis, for any existing major stationary source or any existing GHG-only source.

Any person may make written suggestions or comments on the proposed amendments on or before Tuesday, April 23, 2013. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by e-mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Tuesday, April 23, 2013, at 1 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on April 23, 2013.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 or by e-mail at christine.paulson@dnr.iowa.gov to advise of any specific needs.

The Department has determined after analysis and review that no adverse impact on jobs exists. The amendments will reduce the regulatory burden on affected facilities and will provide additional flexibility to facilities that choose to apply for a PAL permit. The amendments could have a positive impact on jobs in Iowa by increasing Department collaboration with job creators to reduce the regulatory burden and by providing additional flexibility for the regulated community, while still ensuring that Iowa’s air quality is protected and maintained. The ability to respond more rapidly to market conditions facilitates economic growth and the associated jobs creation.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend subrule **33.3(1)**, definition of “Subject to regulation,” as follows:

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on ~~May 7, 2010~~ through September 15, 2011) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs “4” and “5.” “5,” and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in rule 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO₂ equivalent emissions (CO₂e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009). For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO₂e.

3. to 5. No change.

ITEM 2. Amend rule 567—33.9(455B) as follows:

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as amended through ~~November 29, 2005~~ July 12, 2012, are adopted by reference, except that the term “Administrator” shall mean “the department of natural resources.”